

UNITED STATES GOVERNMENT  
National Labor Relations Board

524-5026  
524-6723

# Memorandum

TO : John D. Nelson, Regional Director  
Region 19

DATE: January 22, 1985

FROM : Harold J. Datz, Associate General Counsel  
Division of Advice

SUBJECT: U.S. Postal Service  
Case 19-CA-16909(P)

This case was presented for advice as to whether the U.S. Postal Service (the Employer) violated Section 8(a)(3) of the Act when it became a party to a joint Employer-Union "Employee Involvement Program" which limited unit employee participation in the program to National Association of Letter Carriers (the Union) members.

## FACTS

In September 1982, the Employer and the Union established an Employee Involvement Program which provided in part for the formation of employee and management "workteams" whose proposed function was to identify and suggest solutions to workplace problems, with the overall goal of improving the quality of worklife.

A brochure which was issued jointly by the Employer and the Union to all employees explained that the workteams would be composed of managers, employees and at least one Union steward. Employees who serve as members of a workteam receive 16 hours of training prior to their service. Each workteam meets for one hour per week; each employee is paid at his or her regular rate of pay for that hour.

During the developmental stages of the program, the Union insisted that only Union members be allowed to apply for and serve on a workteam. This demand became part of the final program agreed upon by the Employer and the Union.

Brochures explaining the program have stated that only non-contractual issues may be addressed by the workteams and that none of the recommendations made by the workteams may interfere with or negate the National or Local collective-bargaining agreements between the Union and the Employer. The recommendations of the workteam were to be presented to and accepted or rejected by the Employer's managers who were not obligated to bargain with the workteam. Additionally, the Union and the Employer have explicitly stated that the Employee Involvement Program is entirely separate from collective bargaining, is not a replacement for collective bargaining and is not a substitute for the contractual grievance procedure.

Notwithstanding this, contrary to the prior statement, there is evidence that the Union and the Employer expect mandatory topics of bargaining to be discussed by the workteam. For example, the Employee Involvement Program guideline booklet contains a statement that one of the goals of the program is, "creation of working conditions and a work atmosphere that is self-satisfying for the letter carriers by giving them the opportunities to influence their work environment" (emphasis added). The example that the program brochure gives of a possible workteam topic is a discussion of changes in and recommendation about the starting times of bargaining unit letter carriers.

The incident which forms the basis for the instant Section 8(a)(3) charge occurred on July 10, 1984. On that date, the Employer held a meeting of all of its employees at its Anchorage, Alaska facility. The purpose of the meeting was to introduce the Employee Involvement Program to Anchorage employees and to select participants for a workteam at that facility. During the meeting, an Employer representative told the employees that only Union members could become workteam participants. At the close of the meeting employees who were interested in serving on a workteam were instructed to place a piece of paper with their name on it into a hat which was being circulated. The Charging Party in the instant case is not a Union member and therefore was not permitted to place his name in the hat. After drawing the names for the hat, only four of six available positions were filled by interested employees. However, the Charging Party was not permitted to fill either of the two remaining workteam vacancies. As a result, on July 14, 1984, the Charging Party filed the instant Section 8(a)(3) charge. 1/

#### ACTION

We have concluded that the Section 8(a)(3) charge should be dismissed, absent withdrawal. The Union was privileged to demand that only Union members be chosen to serve on Employee Involvement Program workteams because these teams will potentially be engaging in collective bargaining. Therefore, the Employer did not violate Section 8(a)(3) of the Act by agreeing to and enforcing such a limitation on employee participation in the Employee Involvement Program.

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1/ There has been no Section 8(b)(1)(A) and/or (2) charge filed against the Union.

It is well settled that a union has the sole authority to choose its agents for collective bargaining and that the choice of union agents is an internal union matter. 2/ Therefore, if the Employee Involvement Program workteam has collective bargaining responsibilities, the Union could lawfully choose its employee representatives on the workteam.

We have concluded that the workteams will in fact be discussing topics of collective bargaining. One of the goals of the Employee Involvement Program is the involvement of letter carriers in the "creation of working conditions. . . ." Moreover, one of the examples given as a possible topic for the workteams concerns changing work starting times for bargaining unit employees. This topic is clearly one for collective bargaining. Thus, even though the Union and the Employer have stated that the Employee Involvement Program is to be separate and distinct from the collective-bargaining process, that separation will apparently not be maintained, in fact, since the Union and the Employer appear to expect the workteams to discuss collective-bargaining topics and to make recommendations which will affect terms and conditions of employment. The fact that the Union has agreed that the Employer can accept or reject workteam proposals without engaging in further negotiations with the workteam does not warrant a contrary conclusion, since it is possible that the recommendation of the workteam may prompt the Employer to change its position on the disputed subject. Therefore, since the workteams may supplement the Union's collective bargaining activities, the Union is privileged to designate the employee members of the workteams and also to demand that only Union members be allowed to serve as employee representatives on the workteam. Consequently, the Employer did not violate Section 8(a)(3) of the Act by acquiescing in the Union's demand that only Union members be allowed to participate in the workteam as employee representatives. 3/

Finally, we note that it could be argued that the training and pay provided for participation on a workteam are employee benefits which the Employer denied to the Charging Party merely because he is not a Union member and therefore, the Employer has discriminated against the Charging Party in violation of Section 8(a)(3). However, since we have concluded that the training and the pay will be provided for the purpose of aiding the Union to engage in collective bargaining, the training and pay should not be viewed as a grant of employee benefits impermissibly tied to Union

2/ Oates Brothers, Inc., 135 NLRB 1295 (1962); Sears, Roebuck & Co., Inc., 139 NLRB 471 (1962); Procter and Gamble Manufacturing, 237 NLRB 747 (1978); Howland Hook Marine Terminal Corp., 263 NLRB 453 (1982); St. Joseph's Hospital, 269 NLRB No. 147 (1984).

3/ Although the Employer asserts that the Employee Involvement Program is not a substitute for the collective-bargaining process, it seems clear from the evidence to date that the Program is designed to supplement that process.

membership. It is more appropriate to view the training and pay as lawful because they are merely incidental to the performance of collective-bargaining functions by employee members of the workteam. 4/

For all of the above reasons, the Section 8(a)(3) charge should be dismissed, absent withdrawal.

*H.J.D.*  
H.J.D.

4/ Since this is not a case involving a grant of superseniority, it is unnecessary to decide whether Dairyalea Cooperative, Inc., 219 NLRB 656 (1975), enf. 531 F.2d 1162 (2d Cir. 1976), privileges this grant to collective-bargaining negotiators as well as to those who help administer collective-bargaining agreements.